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Under the law, "dignity" is a principle that is often invoked, but ill-defined. The most recent and prominent example of this was the U.S. Supreme Court's decision in Obergefell v. Hodges. *There, the Court created a right to "dignity," but failed to articulate what a right to dignity meant, or how far it reached.*[1]

This Note attempts to provide a definition to the right created by the Supreme Court. To that end, this Note traces federal jurisprudence in order to determine what types of rights are considered to make up one's "dignity." This Note then examines the states' use of "dignity" within their respective constitutions to determine whether further insight into dignity's meaning can be found there.

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1. *See generally* Obergefell v. Hodges, 135 S. Ct. 2584 (2015).

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INTRODUCTION

In *Obergefell v. Hodges*, Justice Kennedy of the Supreme Court proclaimed that the U.S. Constitution grants all citizens, regardless of

sexual preference, "equal dignity in the eyes of the law."[2] This statement marked the point in a fifty-year evolution in jurisprudence at which "dignity" became a conferrable right under the Fourteenth Amendment. Justice Kennedy's articulation of the right to dignity was made possible by incremental changes in language, coupled with evolving social norms. However, in articulating the right to dignity, the Supreme Court failed to answer two questions: (1) what does dignity mean; and (2) what does a right to dignity entail? Thus, in *Obergefell*, the Court created a right for which it provided no definition.

Given the indefinable and amorphous nature of dignity, the Court's failure to articulate a concrete definition of the term is slightly easier to understand. Black's Law Dictionary defines dignity as "an honor; a title, station, or distinction of honor."[3] Alternatively, Merriam-Webster defines dignity as "the quality or state of being worthy, honored, or esteemed."[4] More substantively, scholars have defined dignity as a concept that "imagines human beings as intrinsically worthy of respect . . . because of their capacity to live self-directed and responsible lives."[5] As these varied definitions demonstrate, dignity is a principle that escapes a precise definition.

Under the Fourth, Eighth, and Fourteenth Amendments, the Supreme Court has grappled with addressing the meta aspects of dignity. Despite dignity's reach to various areas of law, the Court has consistently failed to define dignity as a legal device. Substantive insight into the meaning of dignity under the law was not provided until the Court was confronted with cases such as *Planned Parenthood v. Casey*[6] and *Lawrence v. Texas*.[7] As a result of the Court's failure to develop a legal understanding of dignity, three states—Illinois, Louisiana, and Montana—enacted state constitutional clauses in the 1970s that specifically sought to ensure a right to dignity for their citizens.[8]

This Note examines the respective rights to dignity created in Illinois, Louisiana, and Montana in order to discern whether these states succeeded where the Supreme Court failed in articulating a clear understanding of what the right to dignity includes. Part I discusses the Supreme Court's jurisprudential evolution surrounding the right to dignity in order to determine what the right to dignity under the federal Constitution entails. Part II examines the use of dignity within state

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2. *Id.* at 2608.

3. *Dignity*, BLACK'S LAW DICTIONARY 1135 (6th ed. 1990).

4. *Dignity*, MERRIAM-WEBSTER DICTIONARY 534 (3d ed. 2010), https://www.merriam-webster.com/dictionary/dignity (last visited June 4, 2017).

5. Matthew O. Clifford & Thomas P. Huff, *Some Thoughts on the Meaning and Scope of the Montana Constitution's "Dignity Clause" with Possible Applications*, 61 MONT. L. REV. 301, 308 (2000).

6. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).

7. Lawrence v. Texas, 539 U.S. 558 (2003).

8. ILL. CONST. art. I, § 20; LA. CONST. art. I, § 3; MONT. CONST. art. II, § 4.

constitutions in areas other than clauses created specifically for the purpose of securing dignity for the state's citizens. Lastly, Part III takes an extensive look at Illinois, Louisiana, and Montana's respective constitutional provisions and analyzes whether those provisions provide further insight into dignity's meaning as compared to the Supreme Court's jurisprudence.

I. THE RIGHT TO DIGNITY UNDER THE FEDERAL CONSTITUTION

While the Supreme Court has discussed dignity under the Fourth and Eighth Amendments, the Court has cultivated a more thorough understanding of dignity under the Fourteenth Amendment, using it as a framework within which to create a constitutional right to dignity. This Note traces the federal right to dignity through the lens of the Fourteenth Amendment.

Traditionally, the Court has used the Fourteenth Amendment as a mechanism to extend constitutional protection to decisions regarding marriage, procreation, contraception, family relationships, child rearing, and education.[9] The Court has explained that cases implicating these principles involve the "basic civil rights of man."[10] More expansively, the Court has stated that marriage is "one of the basic civil rights of man" and "fundamental to the very existence and survival of the race."[11] The Fourteenth Amendment's protections are "not merely freedom from bodily restraint[,] but also the right of the individual . . . to marry, establish a home and bring up children . . . ."[12]

As illustrated, the Court has used the Fourteenth Amendment as a tool to extend constitutional protection to individuals with respect to intimate personal decisions that may affect one's immediate family. For the purposes of this Note, rights of this nature will be referred to as "dignity rights." The extension of the Fourteenth Amendment in this manner is a purely judicial creation, as neither the Bill of Rights nor the Fourteenth Amendment explicitly guarantee any such rights. Even more, the Court has stated that they have not "attempted to mark the precise boundaries of this type of constitutional protection."[13] Not only does the Court's statement imply that there may be other personal decisions that deserve constitutional protection, it also provides the Court with the flexibility to announce new dignity rights in the future. The Court has taken advantage of the imprecise boundaries of the Fourteenth Amendment when considering new dignity rights, with the goal of affording constitutional protection to other personal decisions not traditionally protected.

9. *Casey*, 505 U.S. at 851.
10. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).
11. *Id.*
12. Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
13. Bd. of Dirs. v. Rotary Club of Duarte, 481 U.S. 537, 545 (1987).

A. EXTENDING DIGNITY'S REACH THROUGH ABORTION RIGHTS

The federal right to dignity began to gain traction in its transformation into a standalone right during a series of abortion rights cases. Relying heavily on the penumbral reasoning in *Griswold v. Connecticut*, the Court in *Roe v. Wade* acknowledged the right of personal privacy,[14] holding that right to be "broad enough to cover the abortion decision."[15] In extending this right, the Court provided insight into the types of personal decisions deserving of this protection. Only personal rights that are "fundamental" or "implicit in the concept of ordered liberty" fall within this narrow category of rights.[16]

In the subsequent cases *Carey v. Population Services International*[17] and *Hodgson v. Minnesota*,[18] the Court adhered to the *Roe* approach and affirmed the Bill of Right's guarantee that individuals have the right to make decisions that are fundamental to liberty. However, in an abortion case that followed, *Casey*,[19] the Court, through an opinion penned by Justice Kennedy, infused the ideas of personal dignity and autonomy within the Court's privacy right analysis.[20] There, Justice Kennedy stated:

> Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. . . . These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.[21]

Justice Kennedy's reasoning provided some clarification as to what dignity entails by explaining that traditionally protected rights were so protected because of their inherent ties with one's dignity and autonomy. The most intimate and personal decisions that a person makes define, at least in part, what the Court considers to constitute one's dignity. Justice Kennedy further drew a connection between these rights and the laws that seek to regulate them.[22] Under the Court's reasoning, an individual's dignity rights are indistinguishable from "the liberty protected by the Fourteenth Amendment."[23] Thus, any state or federal laws that attempt to circumscribe one's dignity rights are unconstitutional in the same way

14. Roe v. Wade, 410 U.S. 113, 152 (1973).

15. *Id.* at 155.

16. *Id.* at 152 (quoting Palko v. Connecticut, 302 U.S. 319, 325 (1937)).

17. Carey v. Population Servs., Int'l, 431 U.S. 678 (1977).

18. Hodgson v. Minnesota, 497 U.S. 417 (1990).

19. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).

20. Jeffrey Rosen, *The Dangers of a Constitutional 'Right to Dignity*,' THE ATLANTIC (Apr. 29, 2015), http://www.theatlantic.com/politics/archive/2015/04/the-dangerous-doctrine-of-dignity/391796/.

21. *Casey*, 505 U.S. at 851.

22. Rosen, *supra* note 20.

23. *Casey*, 505 U.S. at 851.

that any law that violates an individual's right to liberty would be found to violate the Fourteenth Amendment.

B. FURTHER EXTENDING DIGNITY'S REACH THROUGH VALIDATION OF SAME-SEX RELATIONSHIPS

By utilizing the understanding of the meaning of dignity articulated in *Griswold* and *Casey*, the Court created a standalone right to dignity by applying those principles within the realm of same-sex rights. In *Bowers v. Hardwick*, the Court confronted whether the Constitution conferred a fundamental right upon same-sex couples to engage in sodomy.[24] There, the Court refused to find a fundamental right, stating that there was "no connection between family, marriage, or procreation . . . and homosexual activity."[25] However, applying the understanding of dignity gleaned in the abortion cases, the Court essentially overruled *Bowers* just nine years later with the Court's recognition that heterosexual and sex-sex couples must be treated equally in *Romer v. Evans*, a case arising in Colorado.[26]

Interestingly, the *Romer* opinion does not once mention the Court's earlier decision in *Bowers*, despite the fact that its ruling was issued a mere nine years earlier—a point that Justice Scalia vehemently points out in his dissenting opinion.[27] The readily apparent justification in *Romer* is that Colorado's constitutional amendment did not challenge the legality of homosexual activity in and of itself. In *Romer* the issue was whether Colorado could enact a law that treated individuals differently based on their sexual preferences.[28] Therefore, the Court was not required to determine whether same-sex relationships are similar enough to other rights traditionally protected by dignity to be granted constitutional protection. Nonetheless, the opinion in *Romer* signifies the Court's broader view on same-sex relationships—a developing area of law that would be expanded upon in the subsequent cases of *Lawrence*,[29] *United States v. Windsor*,[30] and *Obergefell*.[31]

In *Lawrence*, the Court invoked the principle of dignity in order to strike down a Texas statute criminalizing intimate sexual conduct between individuals of the same sex.[32] The Court declared that "liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."[33] Pursuant to that reasoning

24. Bowers v. Hardwick, 478 U.S. 186, 190 (1986), *overruled by* Lawrence v. Texas, 539 U.S. 558 (2003).
25. *Id.* at 191.
26. Romer v. Evans, 517 U.S. 620 (1996).
27. *Id.* at 640 (Scalia, J., dissenting).
28. *Id.* at 623.
29. Lawrence v. Texas, 539 U.S. 558 (2003).
30. United States v. Windsor, 133 S. Ct. 2675 (2013).
31. Obergefell v. Hodges, 135 S. Ct. 2584 (2015).
32. *Lawrence*, 539 U.S. at 558.
33. *Id.* at 562.

the Court rejected *Bowers*, characterizing it as the Court's "failure to appreciate the extent of the liberty at stake."[34] That failure, the Court explained, stemmed from the court's oversight of the concept that "adults may choose to enter upon this relationship in the confines of their . . . private lives and still retain their dignity as free persons."[35] Thus, the "liberty protected by the Constitution allows homosexual persons the right to make [the] choice" to partake in intimate sexual conduct.[36] Here, again, the Court blended the ideas of privacy, personal choices, and dignity in order to strike down a law attempting to regulate personal choices. Subsequently, Justice Kennedy, citing *Casey*, connected the right to partake in same-sex intimate conduct with the Court's longstanding affirmation of the rights to "marriage, procreation, contraception, family relationships, child rearing, and education,"[37] stating that "persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexuals persons do."[38]

The Court's decision in *Lawrence* expands the right to dignity in two ways. First, the Court acknowledged that laws that unjustly restrict an individual's exercise of intimate personal choices regarding sexual preference violate one's dignity. Second, by connecting the right to engage in same-sex intimate conduct to longstanding rights traditionally afforded to heterosexuals, the Court raised choices regarding sexual preference to the same level as those traditionally protected rights. Thus, the equal protection guarantee of the Fourteenth Amendment protects individuals against laws that attempt to circumscribe individual choices regarding sexual preference.

In *Windsor*, a New York case, the Court confronted whether the federal Defense of Marriage Act ("DOMA") unconstitutionally excluded same-sex couples from the "definition of 'spouse.'"[39] *Windsor* begins by acknowledging that until recently, society would have rejected "two persons of the same sex [aspiring] to occupy the same status and dignity as that of a man and woman in lawful marriage."[40] This statement sets the tone of the opinion, wherein the Court's disapproval of DOMA is easily apparent by the clear focus on, and explanation of the inequality created by DOMA.[41] The Court recognized that to uphold DOMA would "ensure that if any state decides to recognize same-sex marriages, those unions will be treated as second-class marriages for the purpose of

34. *Id.* at 567.
35. *Id.*
36. *Id.*
37. *Id.* at 559, 574.
38. *Id.* at 574.
39. United States v. Windsor, 133 S. Ct. 2675, 2682 (2013).
40. *Id.* at 2689.
41. *Id.* at 2692.

federal law."[42] This would have the practical effect of "demean[ing] the couple, whose moral and sexual choices the constitution protects."[43] The Court's reference to moral and sexual choices in its analysis demonstrates that the Fourteenth Amendment deems unequal treatment based on those personal choices suspect. This has the effect of not only reaffirming that moral and sexual choices rank among the traditionally protected liberty rights, but also allows the Court to once again frame what constitutes dignity under a constitutional framework.

Focusing on the treatment of same-sex couples, the Court declares that a state's decision to allow same-sex marriage confers upon them "a dignity and status of immense import."[44] Thus, New York's decision to authorize same-sex marriage "sought to give further protection and dignity to that bond."[45] A protection and bond the Court held deserving of constitutional protection under *Lawrence*.[46] Under this analysis, dignity becomes an object that may be "conferred by the States in the exercise of their sovereign power."[47] Consequently, as DOMA infringes upon one's dignity, the statute was struck down as an unconstitutional deprivation of the liberty protected by the Due Process Clause of the Fourteenth Amendment.[48]

C. DIGNITY'S COMPLETE TRANSFORMATION INTO A CONSTITUTIONAL RIGHT

With the understanding that dignity can be conferred, the Court confronted *Obergefell*. *Obergefell* presented the issue of whether states could refuse to recognize same-sex marriages as lawful.[49] Similar to *Lawrence* and *Windsor*, the Court begins its opinion by highlighting the growing acceptance of same-sex marriage within society, and then focuses on the unequal status to which same-sex couples are relegated when the states refuse to recognize their marriages.[50] The Court then reaffirms one's right to make intimate personal choices, stating that the "right to personal choice regarding marriage is inherent in the concept of individual autonomy."[51]

However, rather than relying on a discriminatory effect rationale to hold the law unconstitutional, as occurred in *Windsor*, the Court declares that the fundamental right to marriage "appl[ies] with equal force to

42. *Id.* at 2693–94.
43. *Id.* at 2694 (citing *Lawrence*, 539 U.S. 558).
44. *Id.* at 2692.
45. *Id.*
46. *See* Lawrence v. Texas, 539 U.S. 558, 558 (2003).
47. *Windsor*, 133 S. Ct. at 2693.
48. *Id.* at 2695–96.
49. Obergefell v. Hodges, 135 S. Ct. 2584, 2594 (2015).
50. *Id.* at 2597.
51. *Id.* at 2599.

same-sex couples."[52] Put differently, the Court created a right to dignity within the Fourteenth Amendment.

In order to demonstrate that same-sex couples should have the fundamental right to marry, Justice Kennedy delineates four core principles of marriage that apply to both hetero and homosexual marriages, including that: (1) an individual's "right to personal choice regarding marriage is inherent in the concept of individual autonomy";[53] (2) "the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals";[54] (3) marriage "safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education";[55] and (4) the "Nation's traditions make clear that marriage is a keystone of our social order."[56] To ignore these similarities and hold same-sex marriage to be undeserving of protection as a fundamental right would "[teach] gays and lesbians [that they] are unequal in important respects."[57] Thus, to deny same-sex couples the right to marry would "disparage their choices and diminish their personhood."[58]

By extending the traditional definition of the fundamental right to marriage to same-sex couples, and by justifying its inclusion based on an equality rationale, Justice Kennedy blends the Equal Protection Clause and the Due Process Clause in order to define a new constitutional right to dignity.[59] Justice Kennedy acknowledges this process, explaining that the right of same-sex couples to marry is part of the liberty promised by a combination of the Fourteenth Amendment's Due Process Clause and Equal Protection Clause.[60] Thus, even though the two clauses "set forth independent principles," both still "may be instructive as to the meaning and reach of the other."[61]

Under Justice Kennedy's analysis, the fundamental right to marriage, implicit in liberty, finds shelter in the Due Process Clause. However, the right to make personal choices is normally analyzed under the Equal Protection analysis. Justice Kennedy takes this realization in stride, stating that in some instances the Equal Protection Clause and the Due Process Clause "may be thought to capture the essence of a dignity right in a more accurate and comprehensive way."[62] Thus, the two clauses

52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* at 2600.
56. *Id.* at 2601.
57. *Id.* at 2602.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 2603.
62. *Id.*

can be considered together, and ultimately "converge in the identification and definition of the right."[63] Justice Kennedy leaves no ambiguity regarding the right he has created under this process of analysis—declaring that the Constitution grants same-sex couples "equal dignity in the eyes of the law."[64] Under a quasi-Equal Protection-Due Process analysis, drawing on principles of liberty enumerated in *Griswold* and expanded to include personal choices in *Casey*, the Court constructs a right to dignity under the Fourteenth Amendment. *Obergefell* demonstrates that the right to dignity encompasses personal decisions that are related to a fundamental aspect of one's dignity. However, the Court fails to provide a legal definition of dignity, leaving the door open as to what other types of personal choices implicate one's dignity.

II. STATE USE OF DIGNITY

In lieu of the Supreme Court's protracted creation of the right to dignity, over half of the states have sought to confer dignity rights within their respective constitutions. Among the fifty states, twenty-seven make some mention of "dignity" within their respective constitutions.[65] The use of dignity within these twenty-seven states falls into four general categories: (1) seventeen states provide a right to dignity for crime victims;[66] (2) eleven states require that criminal indictments be brought in a just manner as not to offend the dignity of the state;[67] (3) a single state

63. *Id.*

64. *Id.* at 2608.

65. Those states include: Alabama, Alaska, Arizona, Colorado, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. ALA. CONST. art. V, § 17; ALASKA CONST. art. II, § 24; ARIZ. CONST. art. II, § 2.1.1; COLO. CONST. art. VI, § 22; IDAHO CONST. art. I, § 22; ILL. CONST. art. I, §§ 8.1, 20; IND. CONST. art I, § 13(b); LA. CONST. art. I, §§ 20, 25; MD. CONST. art. IV, § 13, art. 47(a); MASS. CONST. ch. II, § 1, art. XIII; MICH. CONST. art. I, § 24(1); MISS. CONST. art. III, § 26-A, art. VI, § 169; MONT. CONST. art. II, § 4; N.J. CONST. art. X, § 3; N.M. CONST. art. II, § 24; OHIO CONST. art. I, § 10a, art. IV, § 20; OKLA. CONST. art. II, § 34(a); OR. CONST. art. I, § 42(1); R.I. CONST. art. I, § 23; S.C. CONST. art. I, § 24; TENN. CONST. art. VI, § 12; TEX. CONST. art. 1, § 30(a)(1); VT. CONST. ch. II, § 39; WASH. CONST. art. I, § 35; W.VA. CONST. art. II, § 8; WIS. CONST. art. I, § 9m; WYO. CONST. art. V, § 15.

66. Those states include: Alaska, Arizona, Idaho, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Washington, and Wisconsin. ALASKA CONST. art. I, § 24; ARIZ. CONST. art. II, § 2.1.1; IDAHO CONST. art. I, § 22; ILL. CONST. art. I, § 81.; IND. CONST. art. I, § 13(b); LA. CONST. art. I, § 25; MD. CONST. art. 47(a); MICH. CONST. art. I, § 24(1); MISS. CONST. art. III, § 26-A; N.M. CONST. art. II, § 24; OHIO CONST. art. I, § 10a; OKLA. CONST. art. II, § 34(a); OR. CONST. art. I, § 42(a); R.I. CONST. art. I, § 23; S.C. CONST. art. I, § 24; TEX. CONST. art 1, § 30(a)(1); WASH. CONST. art. I, § 35; WIS. CONST. art. I, § 9m.

67. Those states include: Alabama, Arkansas, Colorado, Maryland, Mississippi, New Jersey, Ohio, Tennessee, Vermont, West Virginia, and Wyoming. ALA. CONST. art. V, § 17; ARK. CONST. art. VII, § 49; COLO. CONST. art. VI, § 22; MD. CONST. art. IV, § 13; MISS. CONST. art. VI, § 169; N.J. CONST. art. X, § 3; OHIO CONST. art. IV, § 20; TENN. CONST. art. VI, § 12; VT. CONST. ch. II, § 39; W. VA. CONST. art. II, § 8; WYO. CONST. art. V, § 15.

requires the executive to act with dignity;[68] and (4) three states—Illinois, Louisiana, and Montana—provide a right to dignity in and of itself,[69] or have guaranteed their citizens' right to dignity through an equal protection clause.[70]

A. DIGNITY EXTENDED TO CRIME VICTIMS

Seventeen states guarantee some kind of constitutional right to dignity for crime victims. While the precise language of these clauses varies from state to state, the common thread appears to be a desire to protect the "dignity" of a victim during the criminal prosecution of the individual that caused them harm.[71] The existence of these constitutional provisions has resulted in a great variety of lawsuits, all of which require inquiry into what constitutes "dignity." In order to demonstrate the breadth of these lawsuits, this Note discusses five cases that arose in different states under state constitutional clauses that protect the dignity of crime victims during the criminal process.

In the first case, Mrs. Cynthia Cooper of Alaska brought a claim against the Municipality of Anchorage under article I, section 24 of the state's constitution, Alaska's rights of crime victims' clause, to challenge a district court's sentencing decision with respect to her husband's assault against her person.[72] Mrs. Cooper also brought a motion to have the sentencing proceedings in her husband's case sealed from public access.[73] In a plea agreement, Mr. Cooper agreed to plead no contest to a count of "family violence" in exchange for a "suspended imposition of sentence with [one] year's probation."[74] Unsatisfied that the district court had failed to require Mr. Cooper's attendance at a batterer's intervention program, Mrs. Cooper individually, along with the state's Office of Victims' Rights acting on Mrs. Cooper's behalf, brought suit to challenge the sentencing terms.[75]

Mrs. Cooper and the Office of Victims' Rights asserted that a victim of crime has an implicit right to appeal a defendant's sentence under section 24,[76] which in relevant part provides crime victims with "the right

68. That state is Massachusetts. MASS. CONST. ch. II, § 1; art. XIII.

69. *See* ILL. CONST. art. I, § 20.

70. *See* LA. CONST. art. I, § 3; MONT. CONST. art. II, § 4.

71. *See* ALASKA CONST. art. I, § 24; ARIZ. CONST. art. II, § 2.1.1; ILL. CONST. art. I, § 8.1; IND. CONST. art. I, § 13(b); LA. CONST. art. I, § 25; MD. CONST. art. 47(a); MICH. CONST. art. I, § 24(1); MISS. CONST. art. III, § 26-A; N.M. CONST. art. II, § 24; OHIO CONST. art. I, § 10a; OKLA. CONST. art. II, § 34(a); OR. CONST. art. I, § 42(1); R.I. CONST. art. I, § 23; S.C. CONST. art. I, § 24; TEX. CONST. art. 1, § 30(a)(1); WASH. CONST. art. V, § 17; WIS. CONST. art. I, § 9m.

72. Cooper v. Dist. Court, 133 P.3d 692, 699 (Alaska Ct. App. 2006).

73. *Id.*

74. *Id.* at 696.

75. *Id.* at 695.

76. *Id.* at 700.

to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process . . . ."[77] The court rejected Ms. Cooper's argument, and held that section 24 does not confer a right upon crime victims to "intervene in the litigation of a criminal case" with respect to "whether the prosecutor should seek appellate review of particular judicial decisions."[78] The court elaborated that Mrs. Cooper was not simply bringing a legal claim that the prosecutor had failed to bring, but rather, was "pursuing a legal claim that is adverse to the declared interests of the Municipality of Anchorage," given that Mr. Cooper could withdraw from the plea agreement if Mrs. Cooper was successful.[79] The court held that section 24 conferred no such right upon crime victims.[80]

The court further declined to seal portions of the sentencing proceedings under section 24 during which Mr. Cooper's attorney referenced Mrs. Cooper's son's mental health and behavioral problems as a "source of stress" in the Cooper's marriage.[81] The court found that Mrs. Cooper's claim of privilege lacked merit despite her assertion that section 24's conferral of the "right to be treated with dignity . . . during all phases of the criminal . . . justice process"[82] encompassed her request to seal the record.[83]

In *State v. Gonzales*, a case originating in New Mexico, an alleged rape victim attempted to shield her medical and psychological records from review by the court and other interested parties under article II, section 24 of the New Mexico Constitution—New Mexico's crime victims' rights provision.[84] Section 24 entitles crime victims to "the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process."[85] While the alleged victim prevailed in the district court, the court of appeal reversed the decision.[86] The appellate court held that the combination of New Mexico Rule of Evidence section 504[87] and section 24 of the state constitution did not allow for an alleged rape victim to permit police and state attorneys to access medical and psychological records, and then later assert an "'absolute' privilege"

77. ALASKA CONST. art. I, § 24.
78. *Cooper*, 133 P.3d at 700.
79. *Id.*
80. *Id.*
81. *Id.* at 714.
82. ALASKA CONST. art. I, § 24.
83. *Cooper*, 133 P.3d at 699.
84. State v. Gonzales, 912 P.2d 297, 299–300 (N.M. Ct. App. 1996).
85. N.M. CONST. art. 2, § 24.
86. *Gonzales*, 912 P.2d at 299.
87. N.M. CODE R. § 11-504(B) (2016) ("A patient has a privilege to refuse to disclose, or to prevent any other person from disclosing, a confidential communication made for the purpose of diagnosis or treatment of the patient's physical, mental, or emotional condition, including drug addiction, between the patient and the patient's physician, psychotherapist, or state or nationally licensed mental-health therapist.").

of the same records when requested in the discovery process or an in camera proceeding.[88]

While the court of appeals "recognized the need to protect the dignity of . . . rape victims," it ultimately held that the "plain meaning of the constitutional language creates no such right" for a rape victim to "disclose [his or her] medical records selectively to the police and prosecutors and then invoke an 'absolute' privilege" when the same information is requested by the court or other parties in the case.[89] The court went on further to clarify that section 24 is simply intended to serve as a "reminder that victims . . . have valuable legal and constitutional rights which must be fully considered and fairly balanced by the trial judge."[90] Therefore, relying solely on section 504, the court held that the alleged rape victim waived her 504 rights when she voluntarily turned over her medical and psychological records to state officials.[91]

In the Texas case of *State ex rel. Hilbig v. McDonald*, parents of an alleged aggravated sexual assault victim sought to use article I, section 30 of the Texas Constitution in order to compel disclosure of documents from the District Attorney's office that the office intended to use in a civil suit against the defendant in the State's case against their son's alleged abuser, Mr. Bell.[92] Section 30(a)(1), Texas' crime victim's rights clause, provides that "a crime victim has the . . . right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process."[93]

Initially, the trial court granted the alleged victim's parent's request.[94] The State of Texas quickly intervened, arguing that the trial court did not have the authority to make such an order because the victim lacked standing to act as a party in the criminal prosecution against Mr. Bell.[95] Upon considering the Texas legislature's intent regarding section 30, the court held that it was not the legislature's intent to confer upon crime victims the "right to discover material within the prosecutor's file in a pending criminal matter."[96] Rather, the intention of section 30, the court explained, was to "do away with the problems associated with victims who have been ignored, shunted aside, and kept in the dark by the criminal justice system."[97]

88. *Gonzales*, 912 P.2d at 300.
89. *Id.*
90. *Id.* at 301.
91. *Id.* at 302.
92. State *ex rel.* Hilbig v. McDonald, 839 S.W.2d 854, 855 (Tex. App. 1992).
93. TEX. CONST. art. I, § 30(a)(1).
94. *See State ex rel. Hilbig*, 839 S.W.2d 854.
95. *Id.*
96. *Id.* at 858.
97. *Id.* at 858–59.

In a Rhode Island case, *Bandoni v. State*, Mr. and Ms. Bandoni attempted to bring a civil tort claim against municipality officers for their failure to inform the Bandonis of their rights as crime victims under article I, section 23 of the Rhode Island Constitution—Rhode Island's crime victims' rights clause.[98] The Bandonis had been physically injured in a vehicle accident involving an intoxicated driver.[99] In their complaint, the Bandonis argued that they suffered further injury when they were not fully informed regarding the judicial proceedings against the intoxicated driver.[100] Thus, the Bandonis urged the Rhode Island Supreme Court to create a state *Bivens* action[101] for their injuries that resulted from the municipal officer's failure to notify them of their crime victim rights pursuant to section 23.[102]

The court's inquiry focused heavily on the legislative history surrounding section 23 in order to determine whether it was the legislature's intent to create a cause of action for victims to seek recourse in this manner.[103] Ultimately, the court held that not only was it the legislature's intent *not* to create a cause of action for crime victims in this context, but further that section 23 was *not* a self-executing provision.[104] Section 23 was not self-executing, the court explained, because the amendment was of a type that "merely indicates principles, without laying down rules by means of which those principles may be given the force of law."[105]

In an Ohio case, *State v. Aldridge*, the state attempted to use article I, section 10(a), Ohio's crime victims' rights clause, to prevent a conviction from being overturned.[106] In *Aldridge*, two men were convicted and sentenced to life in prison for sexual abuse of minors.[107] At trial, six minors testified against the two defendants.[108] Six years later, three of the six minors that had testified recanted their claims of sexual abuse at the hands of the defendants, claiming that the lead detective in the case had coerced their testimony through fear and intimidation.[109] In light of the recanted testimony, the trial court set aside the defendants' convictions.[110]

98. Bandoni v. State, 715 A.2d 580, 583 (R.I. 1998).

99. *Id.* at 583.

100. *Id.*

101. *See, e.g.*, Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (holding that an implied cause of action existed upon which individuals could seek relief for violations of their Fourth Amendment rights against unreasonable searches and seizures by federal agents).

102. *Bandoni*, 715 A.2d at 586.

103. *Id.* at 587–93.

104. *Id.* at 595.

105. *Id.* at 587 (citing Davis v. Burke, 179 U.S. 399, 403 (1900)).

106. State v. Aldridge, 697 N.E.2d 228, 248 (Ohio Ct. App. 1997).

107. *Id.* at 234.

108. *Id.*

109. *Id.*

110. *Id.* at 236.

The State appealed the trial court's decision upon seven assignments of error.[111] The seventh assignment of error postulated that overturning the defendants' convictions would violate section 10(a).[112] Section 10(a) provides that "[v]ictims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process."[113] The State argued that section 10(a) "requires a 'balancing of competing rights' in the criminal justice system."[114] This balance, the State argued, would be disrupted if the court set aside the defendants' convictions on the basis of three individuals' recantations while there were still three complaining victims because it would be an unfair prioritization of those witnesses.[115] The State supported this contention by suggesting that it would be an error and a violation of section 10(a) if the court failed to consider the "rights of the 'nonrecanting victims'" under section 2953.21(G) of the Ohio Revised Code, which requires that "[v]ictims' rights . . . be considered by utilizing the least drastic means available to remedy a constitutional violation."[116] Accordingly, the State argued that under the law, the "appropriate, and least drastic, remedy would have been to 'resentence [the defendants] . . . for only those counts in the indictment that involve victims other'" than those who recanted.[117]

The appellate court rejected the State's arguments, stating that "[n]o right of the victim is advanced, and no interest of the state served, by incarcerating the innocent."[118] The court further rebutted the theory that the recanting witnesses were "afforded greater rights" than the other three nonrecanting witnesses as "pure fantasy."[119] Instead, the court explained that the recanters "cast[ed] doubt on the proceeding as a whole," and, accordingly, upheld the lower court's decision to set aside the defendants' convictions.[120]

The examples provided by these five cases are indicative of the dignity-related issues that can arise, even in an area of rights that are limited to a specific class of individuals (such as victims of a crime). The variety in subject matter found in these cases further demonstrates the difficultly in defining dignity. Despite implicating numerous areas of law, the above courts partook in no substantive discussion of what dignity entails. This is striking, as the goal in adjudicating these cases was to ensure the dignity of crime victims. Perhaps the uncertainty surrounding

111. *Id.*
112. *Id.* at 248.
113. OHIO CONST. art. I, § 10(a).
114. *Aldridge*, 697 N.E.2d at 248.
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.* at 249.
119. *Id.*
120. *Id.*

dignity makes courts hesitant to base their legal conclusions on a dignity rationale alone. Or perhaps judges are unwilling to decree that their personal notions of dignity should be binding on others. Either way, the definition of dignity within this context remains amorphous. Of the five cases discussed, no plaintiff succeeded based on the merits of their dignity-based argument. Rather, courts refer to dignity as a principle that should guide their analysis but rest their decisions on more solid foundations of law. Consequently, this practice stifles individuals from successfully asserting rights that are based in their inherent dignity. However, using dignity as the primary rationale for a holding, while simultaneously basing the holding on another legal device, appears to be a frequently used strategy by courts when grappling with cases that involve an individual's dignity rights.

B. DIGNITY AS A "STYLE OF PROCESS"

While constitutional style of process provisions do not add much to the conversation surrounding a right to dignity, eleven states require that criminal indictments be a fair exercise of prosecutorial power in order to avoid offending the dignityof the state in which the criminal charges are brought.[121] This requirement, however, is a legal technicality. For example, in the Colorado case of *People v. Hunter*, the defendant asserted that the bill of information in his case was defective due to its failure to include the concluding language, "against the peace and dignity of the same," in violation of article 6, section 22 of the Colorado Constitution.[122] Section 22 provides that "all prosecutions shall . . . conclude, 'against the peace and dignity of the same.'"[123] The court wholly rejected this contention, holding that the omission of the phrase in the information to be a defect of form rather than substance.[124] Accordingly, the court held there to be no prejudice to the defendant as the information, even without the phrase, contained the necessary information for the defendant to be able to "adequately defend himself."[125]

In *State v. Bell*,[126] a defendant brought a claim almost identical to that in *Hunter*, and the Vermont court similarly denied his claim.[127] There, the defendant claimed that Vermont's constitutional requirement that "[a]ll

121. Those states include: Alabama, Arkansas, Colorado, Maryland, Mississippi, New Jersey, Ohio, Tennessee, Vermont, West Virginia, and Wyoming. ALA. CONST. art. V, § 17; ARK. CONST. art. VII, § 49; COLO. CONST. art. VI, § 22; MD. CONST. art. IV, § 13; MISS. CONST. art. VI, § 169; N.J. CONST. art. X, § 3; OHIO CONST. art. IV, § 20; TENN. CONST. art. VI, § 12; VT. CONST. ch. II, § 39; W. VA. CONST. art. II, § 8; WYO. CONST. art. V, § 15.

122. People v. Hunter, 666 P.2d 570, 572 (Colo. App. 1983).

123. COLO. CONST. art. VI, § 22.

124. *Hunter*, 666 P.2d at 572.

125. *Id.* at 573.

126. State v. Bell, 385 A.2d 1094, 1095 (Vt. 1978).

127. *Id.*

[i]ndictments shall conclude with these words, *against the peace and dignity of the State*,"[128] is a substantive element of the crimes charged, and thus the State's failure to prove said element "render[ed] his conviction invalid."[129] The Vermont Supreme Court disagreed, and held that "the inclusion of the words 'against the peace and dignity of the State' in an indictment is merely a matter of form," and therefore the State was under no burden to prove any additional element beyond those that accompany the charges in the information.[130]

As demonstrated by these examples, courts have held that the requirement that all indictments "conclude against the peace and dignity of the state" is a formalistic requirement imposed in only some states. Consequently, courts refuse to allow defendants to escape criminal prosecution on the grounds that the information omitted specific language. However, in declining to accept the defendant's argument in *Bell*, the court foreclosed a dignity analysis. Requiring that the State show, in addition to the elements of a charged offense, that the crime also violates the State's dignity would have been an intriguing exercise, as the court would have had to confront whether the state itself could have dignity rights similar to individual citizens. Notwithstanding this theoretical observation, style of process clauses do not elaborate upon the meaning of dignity in any meaningful manner that would allow insight as to what dignity means under the law.

C. DIGNITY AS A REQUIREMENT OF EXECUTIVE OFFICE

Unlike any other state, Massachusetts' state constitution requires that its governor "maintain the dignity of the commonwealth in the character of its chief magistrate."[131] This level of mandated "dignity" is reached when the governor "ha[s] an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws."[132] Despite the inclusion of this clause in Massachusetts' state constitution, there appears to be no case law within this area that explains what dignity entails in this context. Thus, similar to the eleven states that require indictments "conclude against the peace and dignity" of the state, Massachusetts' use of dignity in its constitution does not provide any insight as to a workable definition of "dignity" or its general contours under the law.

128. VT. CONST., ch. II, § 39.
129. *Bell*, 385 A.2d at 1095.
130. *Id.* at 1096.
131. MASS. CONST., pt. 2, ch. II, § 1, art. XIII.
132. *Id.*

III. DIGNITY AS A STANDALONE GUARANTEE IN ILLINOIS, LOUISIANA, AND MONTANA

Only three states—Illinois, Louisiana, and Montana—provide a standalone constitutional provision providing a right to dignity.[133] While Louisiana and Montana seek to achieve this end by consolidating dignity and equal protection into a single inquiry, Illinois stands alone in providing for a right to dignity that is separate from equal protection.

A. ILLINOIS

In 1970, Illinois amended its constitution to include article I, section 20, entitled "Individual Dignity," which states:

> To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.[134]

Upon first impression, this Individual Dignity Clause, located in the Illinois Constitution's Bill of Rights, appears to be a standalone affirmation of the right to dignity within Illinois. However, an examination of legislative intent and subsequent interpretation by the judiciary has rendered this seeming right to be a theoretical principle rather than an actionable right.

1. Legislative History of the Right to Dignity in Illinois

The legislative history concerning the Individual Dignity Clause in Illinois is sparse. Despite this dearth of legislative history, review of the legislative history behind the Individual Dignity Clause provides insight into the meaning of the clause. Illinois' delegates sought "to encourage moderation in the use of language that impairs the dignity of individuals by disparaging groups to which they belong."[135] Consequently, the Individual Dignity Clause has been invoked in multiple slander and defamation actions arising in the State of Illinois.[136] However, the legislative history makes it clear that Individual Dignity Clause was not intended to create a private right of action, and further, was not intended to place limitations on the powers of government.[137] Rather, the delegates created the Individual Dignity Clause to be "purely hortatory,"[138] to be used as a

133. *See* ILL. CONST. art. I, § 20; LA. CONST. art. I, § 3; MONT. CONST. art. II, § 4.

134. ILL. CONST. art. I, § 20 (amended 1970).

135. *See* Irving v. J. L. Marsh, Inc., 360 N.E.2d 983 (Ill. App. Ct. 1977) (citing "Ill.Ann.Stat., Const. art. I, sec. 20, Constitutional Commentary, at pg. 676 (Smith Hurd 1971)").

136. *See, e.g.*, AIDA v. Time Warner Entm't Co., 772 N.E.2d 953 (Ill. App. Ct. 2002); *Irving*, 360 N.E.2d 983.

137. *See Irving*, 360 N.E.2d 983.

138. *Id.*

"constitutional sermon," or teaching tool to "guide the conduct of governmental and individual citizens."[139]

2. Judicial Interpretation of the Right to Dignity in Illinois

In *Irving v. J. L. Marsh, Inc.*, an individual brought a lawsuit against a retail salesman that forced him to sign a return receipt that referenced the plaintiff's use of a derogatory slur in order to complete the return of merchandise that plaintiff had purchased previously.[140] The plaintiff sought relief on the basis of the Illinois Individual Dignity Clause, alleging that the clause created a cause of action that an individual could exercise to achieve relief.[141] The trial court disagreed and dismissed the count of the plaintiff's complaint that alleged a violation of Individual Dignity Clause.[142]

Undeterred, the plaintiff appealed the trial court's decision.[143] The appellate court then affirmed the trial court's determination that the Individual Dignity Clause provided no cause of action upon which to seek relief.[144] Relying on the legislative history as indicative of the legislative intent behind the Individual Dignity Clause, the court explained that the clause was no more than "a clear expression of [ ] public policy."[145] However "laudatory or commendable" the purpose of the Individual Dignity Clause was, the court held that it was never intended to "establish a new cause of action."[146] The court continued to explain that to "impose as law certain ideals, however honorable, might create too great a burden for an imperfect society."[147]

Irving was reaffirmed in *AIDA v. Time Warner Entertainment Co.*, in which a nonprofit organization, the American Italian Defense Association ("AIDA"), brought suit against Time Warner Entertainment Company ("Time Warner") for a declaratory judgment under the Individual Dignity Clause.[148] AIDA sought a declaratory judgment on the grounds that the depiction of Italian Americans in "The Sopranos . . . breaches the Individual Dignity Clause of the Illinois Constitution with respect to Italian Americans . . . by reference to, the ethnic affiliation of the characters portrayed in that program."[149] Time Warner's motion to dismiss was granted by the trial court under the rationale that the plain

139. *Id.*
140. *Id.* at 984.
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. AIDA v. Time Warner Entm't Co., 772 N.E.2d 953, 956 (Ill. App. Ct. 2002).
149. *Id.* (quoting AIDA's complaint).

language of the Individual Dignity Clause rendered the clause "merely hortatory," and it therefore does not create a private cause of action.[150]

On appeal, AIDA argued that when the Individual Dignity Clause and the Right to Remedy and Justice Clause[151] of the Illinois Constitution were considered in conjunction, the force of the Individual Dignity Clause could not be relegated as "complete[ly] hortatory."[152] The appellate court disagreed.[153] Citing *Irving*, the appellate court held the Individual Dignity Clause to be "merely an expression of philosophy, and not a mandate that a certain remedy be provided in any specific form."[154]

The idea that an "expression of philosophy" cannot create a cause of action is a trend in Illinois' jurisprudence. In *Sullivan v. Midlothian Park District*,[155] the Illinois Supreme Court reviewed whether article I, section 19[156] of the Illinois Constitution created a specific cause of action.[157] Looking to provisions similar to section 19 in Illinois' earlier constitutions, the court held section 19 and "its predecessors [as] an expression of a philosophy and not a mandate that a 'certain remedy' be provided in any specific form."[158] However, it is important to note that at the time of review in *Sullivan*, the amended 1972 version of the Illinois Constitution—which included the Individual Dignity Clause for the first time—had yet to be adopted.

Using the reasoning in *Sullivan*, Illinois courts went on to find article I, section 12 of the state constitution[159] to similarly lack a cause of action because it exposed no more than a philosophical principle in a trilogy of cases.[160] This is the same reasoning that the court applied in its interpretation of the Individual Dignity Clause in *Irving* and *AIDA*—cases that were decided after the 1972 constitution had been enacted. Interestingly, *Irving* and *AIDA* serve as the only two cases in which Illinois' courts confronted the Individual Dignity Clause in a meaningful

150. *Id.* at 957.

151. *See* ILL. CONST. art. I, § 12 ("Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.").

152. *AIDA*, 772 N.E.2d at 961.

153. *Id.*

154. *Id.*

155. Sullivan v. Midlothian Park Dist., 281 N.E.2d 659, 660 (Ill. 1972).

156. ILL. CONST. art. I, § 19 ("All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.").

157. *Id.* art. II, § 12 ("Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation.").

158. *Sullivan*, 281 N.E.2d at 662.

159. ILL. CONST. art. I, § 12 ("Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.").

160. *See, e.g.*, DeLuna v. St. Elizabeth's Hosp., 588 N.E.2d 1139 (Ill. 1992); Bart v. Bd. of Educ., 632 N.E.2d 39 (Ill. App. Ct. 1993); Segers v. Indus. Comm'n, 732 N.E.2d 488 (Ill. 2000).

manner. However, these cases only provide limited insight into the meaning of dignity under the law.

3. Illinois' Addition to Dignity's Meaning

As the rights to dignity in Louisiana and Montana are intrinsically intertwined with equal protection, Illinois is the only state that provides a substantive standalone constitutional right to dignity. This right to dignity is contained within the context of "communications that portray" individuals in a manner that is offensive to their dignity.[161] Enclosure within this context naturally limits dignity's reach under the Individual Dignity Clause. However, the previously discussed case law does provide some understanding of dignity's meaning that is unique from the Supreme Court's jurisprudence regarding the right.

In *Trop v. Dulles*, an Eighth Amendment case, the Supreme Court similarly held dignity to be a "basic policy,"[162] like the Illinois Supreme Court's reference to dignity as an "expression of public policy" in *Sullivan*.[163] As was seen within the states that seek to protect the dignity of crime victims, courts of all levels balk at premising their holdings on a dignity rationale alone. Rather, courts search for a more exacting standard of law to tether their ruling to and use a discussion of dignity as a means to tip the scale in finding a particular classification or practice to be unlawful. In sum, dignity is a principle that is often invoked but ill-defined.

Despite Illinois' similarity to the Supreme Court's use of dignity as an underlying principle, the Individual Dignity Clause contours an aspect of dignity untouched under the federal Constitution. In Illinois, an individual's dignity is related to the language used to portray them. This is markedly distinct from the Supreme Court's jurisprudence that understands one's dignity to be implicated when individuals make highly personal choices regarding the intimate details of their lives. Illinois provides no further insight into the type of language that would consistently be considered a violation of one's dignity; rather, courts confront the issue on a case-by-case basis. Despite the lack of a clear standard of what types of portrayals of individuals would be considered to violate dignity, by protecting the manner in which an individual's personal life choices are discussed and documented, Illinois provides further dignity protection than currently realized under the Fourteenth Amendment. And further, Illinois adds to dignity's meaning by including not only intimate personal choices made by an individual, but also including other's actions that may be harmful to one's dignity.

161. *See* ILL. CONST. art. I, § 20.
162. Trop v. Dulles, 356 U.S. 86, 100 (1958) (plurality opinion).
163. *Sullivan*, 281 N.E.2d at 662.

B. LOUISIANA

In 1972, Louisiana amended the state's 1921 constitution to include article II, section 3, entitled "Individual Right to Dignity," which provides that:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.[164]

At the time of its adoption, the inclusion of the Individual Right to Dignity by the Declaration of Right's Committee of the 1973 Constitutional Convention was considered to be a "radical" effort to achieve "extreme innovations."[165] Given the naming of the clause with the promise of equal protection, it is evident that the Constitutional Convention understood that the protection of dignity is achieved through equal protection under the law. However, despite this lofty intent to secure and protect the dignity of its citizens, the Individual Right to Dignity Clause in Louisiana has done little more than the Fourteenth Amendment of the U.S. Constitution in this area.

1. Legislative History of the Right to Dignity in Louisiana

In adopting the Individual Right to Dignity Clause, the Constitutional Convention sought to include an Equal Protection Clause within its constitution that would provide more equality than is realized under the Fourteenth Amendment of the United States Constitution.[166] Delegate Roy explained the need for such an expansion in stating that:

> It's been too many times that even the Supreme Court of [sic] United States had dodged the issue with respect to equal protection. We want to make sure that our justices can clearly understand that when . . . the state will discriminate against a person for any one of these categories, then the state must show a reasonable basis for it.[167]

Accordingly, the intent of including the Right to Individual Dignity Clause was to provide a more expansive right to equal protection for its citizens than was provided in the federal Constitution. This intent is further demonstrated in the Constitutional Convention's refusal to rephrase the clause to be indistinguishable from the Fourteenth Amendment's Equal

164. LA. CONST. art. I, § 3.

165. Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 LA. L. REV. 1, 1 (1974).

166. *Id.* at 6.

167. Sibley v. Bd. of Supervisors of La. State Univ., 477 So. 2d 1094, 1108 n.24 (La. 1985) (quoting Proceedings from the Louisiana Constitutional Convention held on August 29, 1973).

Protection Clause. The Convention's refusal was based on the disapproval of the seemingly low bar of protection set by the Fourteenth Amendment.[168] In order to avoid relying on the courts to develop "forbidden classifications," the Constitutional Convention specifically delineated that discrimination on the basis of "birth, age, sex, culture, physical condition, or political ideas or affiliations"[169] was prohibited absent the state's ability to show that the classification furthered a legitimate state interest.[170] This clear delineation of discriminatory categories stands in stark contrast to the U.S. Constitution's guarantee that provides "any person within its jurisdiction the equal protection of the laws."[171] However, the clear delineation of protected categories does not imply that the list is exhaustive.[172] Rather, the requirement within the Right to Individual Dignity Clause that "no person shall be denied equal protection under the laws" allows for the courts to discover additional invidious bases for classification.[173]

2. *Judicial Interpretation of the Right to Dignity in Louisiana*

Given the connection between dignity and equal protection in Louisiana, the case law that implicates the Individual Right to Dignity Clause is substantially more voluminous than the case law that examined the Individual Dignity Clause in Illinois. However, judicial interpretation of the Individual Right to Dignity Clause has focused on equal protection principles rather than any meaningful analysis of the substantive meaning of dignity. Facially, Louisiana's equal protection analysis provides further protection than the Fourteenth Amendment.

For example, in *Sibley v. Board of Supervisors of Louisiana State University*, the Louisiana Supreme Court rejected the federal three-tiered analysis as "an inappropriate model of equal protection analysis under the Louisiana Constitution."[174] To support this contention, the court references the U.S. Supreme Court Justices' dissatisfaction with the standard.[175] Further, the court took issue with the "rigidity" of traditional equal protection analysis because it "forces courts to begin the decision-making process by pigeon-holing a case in a particular category"—that is, whether the case will be analyzed under strict, intermediate, or rational basis level of scrutiny before even reaching the merits of the case.[176] The

168. *Id.* at 1108.

169. LA. CONST. art. I, § 3.

170. *Sibley*, 477 So. 2d at 1107 n.21 (quoting Proceedings from the Louisiana Constitutional Convention held on August 29, 1973).

171. U.S. CONST. amend. XIV, § 1.

172. Hargrave, *supra* note 165, at 7.

173. *Id.*

174. *Sibley*, 477 So. 2d at 1105.

175. *Id.*

176. *Id.* at 1106.

fact that the Court would use "judicial ingenuity" to shift a case to another tier of scrutiny if it anticipated injustice did nothing to assuage the Louisiana Supreme Court's dislike of the standard.[177] As the Louisiana court explained, this process preoccupies the Supreme Court's opinions with the "abstractions of 'fundamental right,' 'suspect classification,' [and] 'levels of scrutiny,'" rather than focusing on the merits of the case.[178] Accordingly, the Louisiana Supreme Court abandoned the traditional federal equal protection analysis in *Sibley* in favor of a standard in which the inquiry would begin with the threshold question of "whether there [was] 'an appropriate governmental interest suitably furthered' by the governmental action in question."[179]

In addition to altering equal protection analysis, the Louisiana Supreme Court has also altered the levels of scrutiny that would attach to classifications. Classifications on the basis of race or religious beliefs are "repudiated completely."[180] When classifications are based on the characteristics enumerated in the Individual Right to Dignity Clause, the advocate for the classification must show that there is a reasonable basis for the classification.[181] Finally, when laws classify on any other basis it becomes the burden of the individual challenging the classification to demonstrate that the classification does not "suitably further any appropriate state interest."[182]

Proceeding under this analysis, the court in *Sibley* confronted the question of whether a $500,000 dollar statutory cap on malpractice judgments had the effect of classifying individuals on the basis of their physical condition—a classification that is prohibited under the Right to Individual Dignity Clause.[183] As the statute classified on the basis of a characteristic enumerated in the Right to Individual Dignity Clause, it became the burden of the State to demonstrate a reasonable basis for the classification. The court asserted that the statute classified malpractice victims into two categories: (1) "malpractice victims . . . [who had] suffered damage" that would require an "excess of $500,000 dollars" in reparations; and (2) "victims whose damages would not require an award over this amount to make individual reparation,"[184] however, the State failed to show that there was any reasonable basis for the physical condition classification.[185] Consequently, the court held the statute to impermissibly

177. *Id.*
178. *Id.*
179. *Id.* at 1107 (citing Police Dep't v. Mosley, 408 U.S. 92, 92 (1972)).
180. *Id.*
181. *Id.*
182. *Id.*
183. *Id.* at 1108.
184. *Id.*
185. *Id.*

discriminate on the basis of physical condition in violation of the Right to Individual Dignity Clause.[186]

Since the Louisiana Supreme Court's decision in *Sibley*, Louisiana courts have adhered to the state supreme court's articulation of the appropriate standard of review in *Sibley* for cases that implicate the Right to Individual Dignity Clause. While the breadth of subject matter encompassed within the cases that partake in this analysis is vast, no clear articulation of what "dignity" is arises.

3. Louisiana's Addition to Dignity's Meaning

Taken together, the legislative history and judicial interpretation of Louisiana's Individual Right to Dignity Clause demonstrate that the clause is intended to increase the amount of protection of individuals' dignity beyond that afforded by the federal Constitution. The naming of the clause, when considered in light of the actual language of the clause, is indicative of Louisiana's understanding that individual dignity can only be achieved when there is equality under the law. By specifically prohibiting certain classifications (such as sex, age, culture, physical condition, and political ideas and affiliations),[187] absent a showing of a legitimate state interest, Louisiana created a solid foundation upon which individual's could bring equal protection claims. In parity, these classifications would call for pause under the federal Constitution as well. However, the grounds for bringing a federal equal protection claim are less definite than those in Louisiana, simply given the fact the ambiguous promise of the Fourteenth Amendment does not delineate what types of classifications are prohibited.

Despite Louisiana's mission and its purported claim to ensure greater equal protection under the law, there is no evidence that this feat has been achieved. For example, in *State v. Baxley*,[188] the Louisiana Supreme Court reviewed a trial court's decision that Louisiana's Crime Against Nature provision[189] was unconstitutional under the Louisiana Constitution. In *Baxley*, the defendant was charged with violating Louisiana's Crime Against Nature provision when the defendant solicited an undercover police officer for oral copulation.[190] The trial court allowed the defendant to challenge the constitutionality of section 14:89(A)(1), which in relevant part criminalizes "unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal," despite the fact that the defendant was only being charged

186. *Id.* at 1109.
187. LA. CONST. art. I, § 3.
188. State v. Baxley, 633 So. 2d 142 (La. 1994).
189. LA. STAT. ANN. § 14:89 (2016).
190. *Baxley*, 633 So. 2d at 143.

under section 14:89(A)(2).[191] Subsection (A)(2) punishes solicitation in connection with what the statute classifies as unnatural acts.[192] However, on appeal, the Louisiana Supreme Court found sections (A)(1) and (A)(2) to be severable, and accordingly held that the defendant did not have the standing to challenge the constitutionality of section (A)(2) because it did not adversely affect the defendant.[193] The court then remanded the case for further proceedings according to law.[194]

Upon being convicted, the defendant in *Baxley* appealed the sentencing provision of section 14:89(B), which provides that individuals that are convicted may be sentenced to "not more than two thousand dollars," or "imprisoned, with or without hard labor, for not more than five years, or both."[195] The court rejected the trial court's finding that section 14:89(B) discriminated against gay men and lesbians in violation of their equal protection rights.[196] To justify its holding, the court held section 14:89(B) to be facially neutral because the statute provided for no prohibited classifications because the statute applied equally to all individuals regardless of their sexual orientation.[197] The court further explained that section 14:89(B) punished conduct, and did not single out gay men or lesbians for punishment.[198]

Additionally, the court inquired into whether section 14:89(B) had a disproportionate impact.[199] The Louisiana Supreme Court rejected the trial court's research which compared the sentencing of crimes against nature versus regular prostitution.[200] According to the trial court, first time offenders of a crime against nature, if found guilty, were convicted of a felony and could face five years in prison and up to two thousand dollars in fines.[201] Further, once convicted of a crime against nature, individuals were required to register with the state as a sex offender.[202] In comparison, individuals found guilty of regular solicitation are charged with a misdemeanor, are not required to register as a sex offender, and face significantly less jail time and penalties.[203] Despite this inconsistency, the Louisiana Supreme Court held steadfast, explaining that the two statutes compared by the trial court applied to heterosexual and

191. LA. STAT. ANN. § 14:89(a)(1).
192. State v. Baxley, 656 So. 2d 973, 975 (La. 1995).
193. *Baxley*, 633 So. 2d at 148.
194. *Id.*
195. LA. STAT. ANN. § 14:89(B); *Baxley*, 656 So. 2d at 976.
196. *Baxley*, 656 So. 2d at 977.
197. *Id.* at 978.
198. *Id.*
199. *Id.*
200. *Id.* at 979.
201. *Id.*
202. *Id.*
203. *Id.*

homosexuals equally.[204] The court explained the only difference was that the two statutes simply sought to punish different types of conduct.[205]

Given Louisiana's purported goal to provide substantive equal protection, the decision in *Baxley* is perplexing. Pursuant to the Louisiana Supreme Court's decision in *Sibley*, the court must first determine whether a classification appropriately furthers a legitimate governmental interest.[206] The *Baxley* court falters at the first step of the analysis when it declines to find that the statute makes a classification between two groups. The court simply states that the Crime Against Nature statute applies equally to all people.[207] This surface level inquiry fails to take into account the discriminatory intent of the statute, and appears to be a maneuver to dodge equal protection analysis, directly defying the legislature's intent in enacting the Individual Dignity Clause.[208] The fact that the court disqualifies the case from equal protection analysis from the outset demonstrates that the Louisiana's legislature's goal to provide for greater equal protection than that under the Fourteenth Amendment has gone unrealized.

The overall tenor of *Sibley* is disdain for federal equal protection analysis which focuses on form rather than substance. However, in *Baxley*, the Louisiana Supreme Court engaged in just that type of analysis, focusing on the mechanical aspects of equal protection analysis rather than delving into the merits of the case. Interestingly, Louisiana courts maintain that their brand of equal protection analysis provides more extensive equal protection than federal analysis.[209] However, other than delineating which types of discrimination must have a "reasonable government interest," Louisiana's equal protection analysis does not offer any significant increase in equal protection for its citizens. As a result of Louisiana's mechanical application of equal protection analysis, the court never makes a serious effort to define dignity's meaning under equal protection. Accordingly, Louisiana provides no further understanding to dignity that has not already been articulated by the U.S. Supreme Court.

204. *Id.*

205. *Id.*

206. *See* Sibley v. Bd. of Supervisors of La. State Univ., 477 So. 2d 1094, 1107 (La. 1985) (citing Police Dep't v. Mosley, 408 U.S. 92, 92 (1972)).

207. *Baxley*, 656 So. 2d at 978.

208. *Sibley*, 477 So. 2d at 1107–08 n.21 (describing the 1973 Louisiana Constitutional Convention).

209. *See generally id.*

C. MONTANA

In 1974, the State of Montana amended its constitution to include article II, section 4, entitled "Individual Dignity," which states:

> The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.[210]

1. Legislative History of the Right to Dignity in Montana

The debate among delegates regarding the adoption of the Individual Dignity Clause into the 1972 Montana Constitution is brief, but provides insight as to the intent of the clause. Overall, the tone of the conversation among the Montana delegates suggests that the Individual Dignity Clause was intended to be an extension of equal protection rights within the State of Montana. As Delegate Mansfield explains in his opening, the clause's intent is to prohibit both private and public discrimination in civil and political rights.[211] To that end, the delegates felt it to be "eminently proper" to include sex in the clause given the testimony heard in favor of its inclusion.[212] Further, the term "culture" was used to "specifically cover groups whose cultural base is distinct from mainstream Montana."[213] "Social origin or condition" were included to reach discrimination on the basis of income and standard of living.[214] Finally, Delegate Mansfield clarified that "political or religious ideas" were not included to afford the right to avoid union membership, but rather to prohibit private and public discrimination on the basis of political or religious beliefs.[215] Thus, the legislature's intent is clear as to what types of discrimination it prohibits.

During the proceedings only one amendment to the Individual Dignity Clause was proposed. Delegate Habedank moved to delete "by any person, firm or corporation or institution" from the clause for fear that imposing the Individual Dignity Clause on private corporations would force individuals to "have to associate with people that [they] choose not to associate with."[216] In response, Delegate Dahood explained that the Individual Dignity Clause simply intended to provide Montana citizens with the ability to "pursue [their] inalienable rights without

210. MONT. CONST. art. II, § 4.

211. PROCEEDINGS OF THE MONTANA CONSTITUTIONAL CONVENTION 1971–1972 1642 (Margaret S. Warden et al. eds., 1979).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 1643.

having any shadows cast upon [their] dignity through unwarranted discrimination."[217] And to achieve that end, Delegate Dahood further argued that the clause should apply to both public and private institutions.[218] Upon further objection, Delegate Dahood acquiesced there could be "certain matters" that would allow for specific qualifications (such as gender status to become a member of the Elks or Masons) not in violation of the Individual Dignity Clause.[219] Upon no further objection, Delegate Habedank's amendment to the Individual Dignity Clause was rejected and the clause was adopted as it reads today.[220]

2. *Judicial Interpretation of the Right to Dignity in Montana*

In contrast to Louisiana, Montana courts have molded their interpretation and analysis of cases arising under the Individual Dignity Clause using the Supreme Court's Fourteenth Amendment equal protection analysis, with one notable exception. In *Butte Community Union v. Lewis*, the Montana Supreme Court declared that Montana courts "need not blindly follow the United States Supreme Court" in determining whether a Montana statute violated the Montana Constitution.[221] The Montana Supreme Court crafted its own middle-tier analysis rather than using the Supreme Court's binary strict scrutiny or rational basis review scrutiny to analyze an equal protection claim.[222] In *Lewis*, the court read there to be an implicit right to welfare in the Montana Constitution.[223] Acknowledging equal protection as an "essential underpinning" of a free society, the court held that equal protection analysis undertaken within the context of welfare rights deserved a more exacting standard of review.[224] Thus, the "old rational basis test" which allows for discrimination for "the most whimsical reasons" was not exacting enough.[225]

Pursuant to *Lewis*, Montana's middle-tier scrutiny first inquires into whether "constitutionally significant interests are implicated by governmental classification," and if so, such "arbitrary lines should be condemned."[226] The court must then balance the "rights infringed and the governmental interest to be served by such infringement."[227] Applying

217. *Id.*
218. *Id.*
219. *Id.* at 1644.
220. *Id.* at 1646.
221. Butte Cmty. Union v. Lewis, 712 P.2d 1309, 1313 (Mont. 1986), *superseded by* constitutional amendment, as stated in Zempel v. Uninsured Emp'rs Fund, 938 P.2d 658 (Mont. 1997).
222. *Id.*
223. *Id.* at 1314.
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*

this standard in *Lewis*, the court held the classification resulting from the statute to be arbitrary, thereby violating the Montana Constitution.[228] The Montana Supreme Court's decision in *Lewis* demonstrates that the court sought to provide for more equality under the law than that which is traditionally found under the Fourteenth Amendment. This notion was confirmed by the Montana Supreme Court itself in *Cottrill v. Cottrill Sodding Services*, in which the court stated that the Individual Dignity Clause "provides for even more individual protection" than the Fourteenth Amendment.[229]

In *Davis v. Union Pacific Rail Road Co.*, the Montana Supreme Court provided a more digestible articulation of the middle-tier standard, explaining that the burden falls on the state to demonstrate that the "classification is reasonable and that its interest in the classification is greater than that of the individual's interest in the right infringed."[230] The court further clarified that middle-tier scrutiny is used in "limited situations" such as when the implicated rights "have some origin in the Montana Constitution."[231]

Despite maintaining its own level of scrutiny for Montana Constitution-based rights, Montana courts largely adhere to Fourteenth Amendment equal protection principles in evaluating cases under middle-tier scrutiny. As such, of the three states that provide for a constitutional right to dignity, Montana provides the most insight as to what dignity entails. For example, in *McDermott v. State Department of Corrections*, the court stated that the Individual Dignity Clause "embod[ied] a fundamental principle of fairness."[232] Meaning that "the law must treat similarly-situated individuals in a similar manner."[233] In *McDermott*, an individual convicted of check fraud brought an equal protection claim on the basis that a state statute violated his equal protection rights because it "denies good time credits to probationers while allowing them for parolees."[234] While the court did not hold that the denial of good time credits implicated the Individual Dignity Clause, the court did assert that "[p]hysical liberty is a fundamental right which would normally trigger either a strict scrutiny analysis" or the "reasonably related to a legitimate penological interest" standard.[235]

Further insight as to what constitutes the type of dignity that is protected under the Individual Dignity Clause is provided in *Armstrong v.*

228. *Id.*
229. Cottrill v. Cottrill Sodding Serv., 744 P.2d 895, 897 (Mont. 1987).
230. Davis v. Union Pac. R.R. Co., 937 P.2d 27, 31–32 (Mont. 1997).
231. *Id.* at 31.
232. McDermott v. State Dep't of Corr., 29 P.3d 992, 998 (Mont. 2001).
233. *Id.*
234. *Id.* at 994.
235. *Id.* at 999.

State.[236] Although the facts of *Armstrong* did not implicate the Individual Dignity Clause directly, the court noted that:

> Respect for the dignity of each individual—a fundamental right, protected by the [Individual Dignity Clause]—demands that people have for themselves the moral right and moral responsibility to confront the most fundamental questions about the meaning and value of their own lives and the intrinsic value of life in general, answering to their own consciences and convictions.[237]

Interestingly, the Montana Supreme Court classifies the Individual Dignity Clause as providing for a fundamental right. By doing so, the court—similar to the U.S. Supreme Court—blends substantive due process and equal protection into one another. The resulting dicta produced by the enfolding of the two principles is reminiscent of the language used by Justice Kennedy when he partakes in the same analysis in areas where dignity is implicated when it comes to individual's making choices to add "meaning and value" to their lives.[238]

3. Montana's Addition to Dignity's Meaning

Compared to all other states, Montana not only provides for the most comprehensive understanding of dignity, but also applies an equal protection analysis that truly extends equal protection rights beyond the confines of the Fourteenth Amendment. As demonstrated in *Armstrong*, the Montana Supreme Court blends equal protection and substantive due process. This practice allows for a discussion of fundamental rights—which the Montana Supreme Court has held dignity to be. In doing so, the court illuminates the meaning of dignity by holding it to include "moral right[s] and moral responsibilit[ies].[239] While the court's elaboration halts there, the court suggests that moral rights, in addition to intimate personal choices, fall under the purview of dignity.[240] Arguably, moral rights and personal choices regarding intimate choices could be considered one in the same. Using the phrases "moral right[s] and moral responsibilit[ies]" opens the door for other equal protection claims that are not a personal choice but implicate moral principles.[241]

Equal protection analysis in Montana succeeds where Louisiana failed in providing more expansive equal protection under the law than the Fourteenth Amendment. Montana courts achieve this result by maintaining a stricter state-specific level of scrutiny for claims arising under the Montana Constitution than does the U.S. Constitution.

236. Armstrong v. State, 989 P.2d 364 (Mont. 1999).
237. *Id.* at 389.
238. *Id.*
239. *Id.*
240. *Id.*
241. *Id.*

Moreover, Montana further guarantees expansive equal protection when Montana courts consider the Individual Dignity Clause in conjunction with another constitutional clause that implicates dignity, and use the combined force to strike down a law or classification.[242]

For an example of the latter, in *Walker v. State*, an inmate brought a claim that the conditions of a Montana state prison violated the Eighth Amendment's prohibition against cruel and unusual punishment.[243] In *Walker*, the court details the disgusting and startling conditions that prisoners were expected to live in.[244] In reviewing its own jurisprudence, the court stated that "it is not the degree of injury which makes out a violation of the eighth amendment. Rather, it is the use of official force or authority that is 'intentional, unjustified, brutal and offensive to human dignity.'"[245] Accordingly, the court held that "complementary application of the dignity clause" was warranted.[246] Considering the prohibition against cruel and unusual punishment in conjunction with the Individual Dignity Clause, the court held the prison's conditions to be an "affront to the inviolable right of human dignity."[247] The court then articulated that dignity includes "security from sexual violation," "attention to such basic human needs as adequate medical care, humane rules for visitation, adequate exercise, and adequate opportunity for education or other capacity-developing activity."[248]

Given the Montana Constitution's promise that the "[t]he dignity of human being[s] is inviolable," it is interesting that Montana courts use the Individual Dignity Clause to reinforce other constitutional protections rather than justifying a violation of dignity on the basis of the Individual Dignity Clause alone.[249] However, as previously demonstrated, this practice seems to be a routine trend among all courts when adjudicating cases that revolve around issues of dignity. In contrast to the other states, when Montana uses its Individual Dignity Clause in this manner it elaborates on what "dignity" means within the contexts of those other constitutional protections. As seen in *Walker*, for example, where the Montana Supreme Court took the opportunity to articulate how the prison's conditions violated the defendant's dignity. Despite Montana's hesitance to secure rights on a dignity rationale alone, Montana not only provides the most equality under its Individual Dignity Clause, but also adds substance to the definition of dignity.

242. *See* Clifford & Huff, *supra* note 5, at 328, 330–35.
243. Walker v. State, 68 P.3d 872, 877 (Mont. 2003).
244. *Id.* at 883.
245. *Id.* at 882 (quoting Felix v. McCarthy, 939 F.2d 699, 702 (9th Cir. 1991)).
246. *Id.* at 884.
247. *Id.* at 885.
248. *Id.* at 884.
249. MONT. CONST. art. II, § 4.

CONCLUSION

As demonstrated throughout this Note, dignity as a theoretical principle touches vast areas of law but fails to be clearly understood at either the state of federal level. Federally, the right to dignity protects only intimate personal choices that are necessary for an individual to realize their guaranteed liberty under the Fourteenth Amendment. In comparison, states have considered dignity in areas other than the strict confines of the Fourteenth Amendment, but similarly fail to provide a clear definition for dignity. In state constitutional clauses that protect the dignity of crime victims, courts routinely falter in articulating what dignity means, but rather use the term as an underlying principle to inform their decisionmaking process with a solid legal foundation. In Illinois and Montana, strides are made to add to the definition of dignity. Illinois has included communications that contain slander and defamation within the category of things that are offensive to dignity,[250] while Montana states that "moral right[s] and moral responsibilit[ies]" fall within the definition of dignity.[251]

What is clear from both the federal and state use of dignity is that it is the most common justification for which equal protection under the law is provided. However, despite dignity being the underpinning of equal protection, and states proclaiming to confer a right to dignity, critical analysis demonstrates that there is no standalone guarantee to dignity within the United States. Should either the Supreme Court or state legislators actually craft a standalone right to dignity, not only would a great amount of ambiguity be removed from conversation surrounding dignity, but courts would have to stop manipulating current areas of law in order to satisfy black letter law while being cognizant of dignity concerns. Ultimately, a standalone right to dignity unburdened by the structural aspects of other areas of law would provide for a more complete protection of an individual's dignity in the United Sates.

250. *See, e.g.*, AIDA v. Time Warner Entm't Co., 772 N.E.2d 953 (Ill. App. Ct. 2002); Irving v. J. L. Marsh, Inc. 360 N.E.2d 983 (Ill. App. Ct. 1977).

251. Armstrong v. State, 989 P.2d 364, 383 (Mont. 1999).

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